of modesty and walks naked in the streets. Some may even find it easier to accept the risk of penalty for stealing than the social sanctions for violating the norms of modesty. 121 114 671 681

But although the notion of absolute vs. relative compulsion is arbitrary and artificial as a criterion for defining legal rules, yet Allen is close to another related and widespread criterion of legal sanctions, that is, the idea of the "use of force." Hoebel maintains that "the really fundamental sine qua non of law in any society - primitive or civilized - is the legitimate use of physical coercion.... The law has teeth, teeth that can bite if need be..." (1961a:26) Pound defines law as "social control through the systematic application of the forces of a politically organized society" (1910-11:591). This definition has later been adopted by Radcliffe-Brown (1940) who considers the obligations imposed upon the individual but for which there is no sanction backed by the use or the possibility of use of physical force as merely a matter of social conventions or custom but not law.

It is evident, then, that those who used the concept of "coercion" as the basis for their distinction of law needed a further specification of the concept. For, as Hoebel has noticed, "There are as many forms of coercion as there are forms of power...and only certain methods and forms are legal" (1961:26). He states that coercion by gangsters is not legal coercion; neither is the parents' physical coercion if it is extreme in form. The essential element in legal coercion according to Hoebel, is "the general social acceptance of the application of physical power, threat or, in fact, by a privileged party, for a legitimate cause, in a legitimate way, and at a legitimate time." The privilege of applying physical force constitutes, according to Hoebel, the official element in law. The person who is recognized as having the right to exercise force is the symbol of authority. This does not mean that he has to be an official or a holder 121 114 671 681 625

of any permanent office; it is any person who is exercising the legitimate use of force. Simple as the above argument might seem, it really offers very little in refining our conception of legal sanctions. For we are still left with the question of how a person acquires the right to exercise the physical force. What gives his action the legitimacy that is otherwise lacking in other forms of coercion? In trying to deal with this problem anthropologists resorted to a concept that is used by the analytical jurists, that is, the court. There is a basic difference, however, between the anthropologists' view of the court and that of the analytical jurists. The latter see the court as the ultimate source of law: court creates the law. Anthropologists, on the other hand, tend to use the court as the source of law but as a criterion of its existence. An example of such views is Max Radin who maintained that the infallible test "for recognizing whether an imagined course of conduct is lawful or unlawful... is to submit the question to the judgment of a court" (1938:1145).

Anthropologists differed among themselves, however, on what constitutes a court. While Radcliffe-Brown (1940) insists that it must be a body of people acting on behalf of the community as a whole and therefore does not exist in all societies, Hoebel (1961), on the other hand, extends the concept to include the diffused public opinion or sentiment of the people in a given society as a kind of court that gives legitimation to the use of force by individuals or groups in the absence of a recognized body acting on behalf of the community. He sees a court in cases of self-help where the aggrieved party or his kinsmen carry on the procedures of redress without the intervention of a third party. He maintained that if the procedures are right, there will be "at least the compulsion of recognized 'legal' procedure, though the ultimate court may be the 'bar of public opinion'" (1961:25).

439 Aggary Eila. When they arrived with the cigarettes, Hadi was not at his tent; he was in the market of the nearby town selling sheep. They left the cigarettes and left for Alexandria to arrange for their distribution. In Alexandria they met Rabbuh Hakim, the son of Hakim, who married a girl from Alexandria and lived there. He made his income from buying smuggled goods at wholesale prices and selling them at a profit. When he met the two members of the Geneishat tribe and learned from them about the shipment they left at Hadi's place, he wanted to buy it. But they refused on the grounds that Hadi had already contacted someone and that all they could do was to give the first option to that individual. Two
439 hours after the conversation between Rabbuh Hakim and the Geneishat, the
625 police officer on duty at the station of Burg el-Arab received an anonymous call from Alexandria informing him that a shipment of smuggled cigarettes worth more than three thousand pounds was hidden in Hadi's olive mill (which was not in use at that time). The call was overheard by a member of the Sanagrah tribe who works as a detective with the police. He tried to warn Hadi of the police raid but it was too late. The officer found the cigarettes in Hadi's olive mill in the exact place where the informant said they would be. The cigarettes were confiscated and Hadi was arrested and later released when the officer didn't find enough evidence to prove that he knew about the shipment or that it belonged to him.

685 The confiscation of the cigarettes enraged both Hadi and his part-
627 ners. They went to Sheikh Ta'ib, the Aqila of bait Eweidha to which Hadi
578 belonged. They told him about their conversation with Rabbu in Alexandria and said that they thought he was the one who informed the police about the shipment. Ta'ib said that Rabbu must have done this because of old

His main function is to manage the affairs of the village, apprehend crininals, report and register births and deaths, collect taxes and represent the government in all matters involving the relationship between the government and his village. Because of his position as the representative of the govrernment, he usually enjoys a considerable amount of power which, over the years, many omdas have used it to obtain personal benefits.

In 1958 the committee appointed for the examination of the possibility of applying the system to Awlad Ali noticed that villages in the sense of a compact settlement similar to that existing in the rural area simply do not exist in the Western Desert region. There are a few settled communities in the area but they are scattered homes or a few stores. These communities have no identifiable boundaries or administrative existence. The area as a whole is divided into ten administrative districts, each having a police station. These districts correspond to the old Senusia Zawyas which played an important role in maintaining order in the era until the First World War. Until that time the area was divided into fourteen zones each of which was under the jurisdiction of one of the zawyas. The zawyas were mainly religious centers, or shrines, inhabited and directed by a member of the Senusi order of Cyrenaica. The role of the head of the zawya was to teach the Qoraan and spread the teachings of the Senusi order. One of the ways the zawyas attracted followers was through distribution of food and clothing to those who joined it. The zawyas also provided places of refuge for those who needed protection since no one could force his way into the sacred zawyas. Because of their religious position which put

795 Because of their religious position which put
175 them outside the tribal structure, the leaders of the zawyas played a
627 significant role in mediation and settling disputes between various tri-
793 bal segments. At their disposal was their ability to ostracize anyone
[626] who did not abide by their decision from the zawyas, which meant depriv-
ing him from all the benefits, social as well as religious, that member-
ship in the zawyas offered.

795 After the First World War when the British replaced the Turks as
175 governors of the area, the zawyas were closed and the religious leaders
177 ordered to leave. The zoning established by the zawyas existed, however,
[648] and was used as the basis for the redistricting of the area. Police
[631] stations replaced the religious centers. From the standpoint of the tri-
[625] bal population itself, the districts have no psychological or political
619 reality. The zawyas were originally established in the areas of tribal
634 concentrations. But the area itself did not have any political identity.
[795] The only reality from the standpoint of the inhabitants was the tribal
[361] reality and affiliation which cut across many of these districts. Many
of the tribal segments inhabiting one district were and still are hostile
177 to one another. To transform the zones into administrative districts and
634 to establish one office of leadership for the whole district was to im-
619 pose a political unity nonexistent among the tribal segments inhabiting
the district. To avoid this difficulty, the government supplemented the
[622] territorial principle of the omda system in the rural area with the prin-
ciple of tribal representation and came up with a system which seems to
suite the situation in the Western Desert. For each of the districts,
a list of all tribal segments which habitually occupy the area and whose
tribal land is located within the district, is made. The most powerful

634 government." But due to the nature of the representation and the spe-
554 cific relation of the government to the area, the position of the omda
657 does not pose serious demands upon the loyalty of the omda to his tribal
[578] group.

634 Because of the omda's ability to bring benefits to his tribal seg-
554 ment from the government, the ability to manipulate the administrative
657 officials is the most important basis for the nomination of a given
666 individual for the position of the omda. "The omda is one who can speak city talk and knows how to deal with the government officials." Age is not important; young people know more about city ways than old people. "A man may be a cheat, but as long as he can get our things done, he is the best man for the job...of course, we don't want to nominate someone with a bad reputation who may blacken our face in front of everybody. However, if he has a bad reputation the council would not approve his appointment...he just has to be someone who can get things done..."

159 Muftah Mughaieb, the sheikh of the Sanagrah tribal segment in the
634 district of Haman, described the circumstances of his nomination as
554 follows:
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666 Before the former sheikh of that tribal segment died (he
578 was Muftah's uncle), one member of the group got into an argu-
625 ment with the police officer in charge of the police station in the district. The tribesman insulted the police officer who insisted on arresting him. Rumors also had it that the police officer was using his authority to reduce the share of the tribal segment in the government aid which was badly needed during that particular year. Sheikh Muftah, whose father is the Aqila of

159 bait Mughaieb of the Sanagrah tribe, went to the officer and apol-
634 ogized to him on behalf of the whole group and invited him to a
554 lavish dinner party. The charges against the tribesman were soon
657 dropped, and it was concluded that it was because of the way Muftah
666 had handled the situation. Since that incident, Muftah has been
[578]
[625] known as an expert in handling the government officials. One year
later, the sheikh of the tribal segment died, and a meeting was
held during which the important members of the Sanagrah tribal
segment in the district decided to nominate Muftah for the posi-
tion of the sheikh, vacant by the death of his uncle. Muftah, who
was attending the meeting, was asked to accept the nomination, and
he agreed. "...I accepted the nomination reluctantly." Muftah
later told me, "I did not really want to become the sheikh. The
159 position does not bring any personal benefit, and it involves a
634 lot of responsibility. The sheikh has to act as an attorney for
554 his tribe, represent it to the government and competes with other
657 sheikhs to bring his people things that the other sheikhs cannot
get for theirs, like more membership in the cooperative units or
in the socialist union. And what does he get in return? Nothing...
not even the gratitude of his people. To them, he is a servant of
the tribe, and his duty is to look after its interest. If he
doesn't, then everybody is quick to criticize him. I had to ac-
cept the nomination because I felt it was my duty to do so and not
to embarrass the awaqil and the important people of the tribe who
[465] put their confidence in me. As far as the government, all I get is
six pounds a month."

159 562 428 593 444 lived. Five years ago the husband died in a mining accident leaving Fatma with a ten-month-old boy. By that time, her father had been disabled, and her brothers wanted to manage her husband's store on her behalf. Knowing that her brothers were greedy, she refused and insisted that she take care of the store herself. The brothers objected on the grounds that it was not customary for a decent woman to be exposed to the customers in the store. When she insisted, the brothers threatened her. When the threats did not work, they beat her. After that, she [625] went to the police station in the area, filed a complaint against her brothers, and asked for police protection. The police officer in charge brought the brothers in and warned them that if they interfered with the store, not only would he arrest them, but he would also use his influence to get them forced from the irrigation projects where three of them worked. The threat worked, and they became friendly with their sister, buying things for the store whenever they went to Alexandria and sometimes helping in the store with her consent when she was on housecalls as a midwife. A year later Fatma was married for the second time to a 159 562 428 593 distant cousin; a few months later her father died. In a family meeting that followed the funeral, Fatma made her announcement that she was claiming her share of her father's herd. The brothers were angry and tried to 233 [587] beat her. But the older members of the bait who were present at the meeting stopped them and told them that Fatma had all the right to claim her share of the inheritance according to Awlad Ali ways and that there was [578] nothing that they could do about it. She was characterized in that meeting as "bint haram" (illegitimate child), an insult used to refer to those who show selfishness in their kinship obligations. When she left the camp with her share of the herd, this seemed to have severed

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562 This apparently is not a typical case, nor is Fatma by any means representative of a typical tribal women. It is a case of a marginal woman who had revolted against the tribal definition of a female role. She violated the customary ways of her society and claimed her share of her father's inheritance; and by doing this, she forfeited her right to protection by her brothers. She was able to do this because of her marginality which enabled her to draw upon sources of protection outside the tribal pattern, the police. It is interesting to note here that by doing so, she was not totally eliminated or ostracized from her society; rather, her role was redefined as that of a man, and she was treated as such.

682 person in the crowd. So, Do'ah volunteered to be lowered down
672 to clear the well. He then proceeded to the well, glanced at the
312 bottom of it, and threw a small stone to see if there was any water left in it. The stone made a faint splash indicating that there were a few inches of water. After that, he examined the rope and the equipment used. Satisfied with everything, he tied the rope around himself and was lowered very slowly and carefully by the crowd at the top of the well. As Do'ah was more than half-way down, the rope broke, and he fell. When the crowd called him, Do'ah answered in a faint voice telling them that he was hurt but that he would be all right. The crowd then looked for a spare rope to lower somebody to get Do'ah but could not find any in a nearby camp. They sent a man to get a rope from the next camp, but by the time a man was lowered to get Do'ah, he was dead; he had drowned in six inches of water.

682 Since the place of the accident was close to the police sta-
672 tion, word got to the officer who, after investigating the case,
• [625] ruled it as accidental death. But while the government authorities
[613] were investigating the case, members of the Bait to which Do'ah belonged were proceeding with the customary ways of Awlad Ali to claim bloodmoney for their dead kinsman. The idea was that a life had been lost, and that regardless of the police investigation, someone must pay for it. The question was who. Since the well belonged to Hemeida, Do'ah's relatives insisted that he was the one to pay the bloodmoney. Not denying the fact that someone had to pay for the death of Do'ah, Hemeida insisted that the one to pay was the

682 agreed that the sticks were not by nature lethal weapons. The
672 latter, according to the tribal law, are only guns and knives,
627 since they give the victims no chance to defend himself. They ruled the case unintentional killing for which only L.E. 300 should be paid.

682 Since Yadem and his brother were arrested by the police for
625 their crime, the payment of the bloodmoney was postponed until
692 the case was settled according to the state legal system. Only half of the bloodmoney was paid and the rest was postponed until the case was decided upon by the legal system and Yadem released.

682 This is obviously a case in which the nature of the killing was
672 decided upon by drawing upon the material aspect of criminal
673 causation. The nature of the weapon used was the major determinant
[411] of the crime. Only guns and knives are defined as lethal; all others are non-lethal by nature, although they might cause the death of the victim. Death caused by a non-lethal weapon is considered as unintentional regardless of whether or not the actor intended the results, while death by a lethal weapon, even without the intention of killing, is classified as intentional killing, as appears in the following case.

CASE #4: The Case of the Threatened Tribesman

613 For more than five years Bait El-Mawi from the Sheibat tribe
628 had been in a continuous state of feud with Bait El-Asi from the Gemeiat tribe. One night, during a Khamasein sand storm when visability was extremely low, Abd-el-Galil from Bait El-Mawi heard a noise outside his tent, and the dogs were barking indicating that a stranger was there. Being sure that someone was approaching

3:Evans-Pritchard E-4, 5 (1942-1944) 1949 MT9 Libyan Bedouin MT9
(1837-1942) Sanusi



Arabs, to assess and collect taxes, to maintain security, and to control the few police allotted to them. In this task they expected co-operation from the local Shaikhs of the tribal sections and the Shaikhs of the Sanusiya lodges.

It is remarkable that the Bedouin paid any taxes at all, for the mudirs had not sufficient force at their command, nor had the Governor at Banghazi, to compel the Bedouin to pay if they were determined not to do so. The mudir of Slanta had only 50 to 60 soldiers in his sub-district and the Bara'asa whom he administered could have annihilated this force with ease, as could the 'Awaqir the 50 soldiers and the handful of police stationed at Suluq. That taxes were collected at all, and all the more that they were collected without constant disturbance, is to be accounted for partly by the recognition by the Shaikhs of the tribal sections, with whom the mudirs were careful to keep on good personal terms, that there was a moral obligation to pay them; but there were also sanctions if they were not paid. If the Shaikh of a tribal section did not collect the taxes due from that section, he was held responsible and action could be taken against him personally. The mudir, accompanied by a small armed force, went a round of the tribal sections attached to his sub-district each year, generally in springtime, and sent out other tax-collecting parties in other directions. Sometimes special tax commissions appointed by the Governor also toured the country. A favourite device was for such parties to quarter themselves in the camp of a recalcitrant Shaikh and to reside there as his guests, for the soldiers and police carried few provisions, till the tax was paid. The Shaikhs, on the other hand, were made partners in the undertaking by, besides investment with an official robe and status, receiving a percentage of the taxes collected, the mudir himself also taking a percentage. Moreover, each Shaikh whose section paid the tax was determined that the other sections should not escape paying as well. A Shaikh was able to divide up the assessment on his section among the minor Shaikhs, and the minor Shaikhs among yet smaller ones. It was in the interest of each Shaikh to see that the smaller ones did not escape their share and leave him with the responsibility for a deficit. Responsibility was in this way passed down the tribal structure. On the whole the system worked well and the Turkish officials and the Bedouin did not